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Attorney for: Class Member Amy O'Keefe

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF THE STATE OF CALIFORNIA

CARRIE COUSER, INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

PLAINTIFF,

v.

COMENITY BANK,

DEFENDANT.

CASE No.: 12-CV-02484-MMA-BGS

JUDGE: Hon. Michael M. Anello

OBJECTION BY CLASS MEMBER AMY
O'KEEFE TO MOTION FOR APPROVAL
OF CLASS SETTLEMENT (Dkt. No. 52) &
MOTION FOR APPROVAL OF
PLAINTIFF'S ATTORNEY FEES (Dkt. No.
63)

Class Member Amy O'Keefe (Claim # CYC-12635956801 1925746) whose address is 4619 Castle Ct Holland, Michigan, 49423 and telephone number (through counsel) 616-772-5221, hereby submits objection to the class settlement and to the motion for approval of class counsel's attorney fees as follows:

O'Keefe's primary objection is that the fees requested by class counsel are unreasonable and excessive and significantly deplete the overall amount available for distribution to the claimants. The requested fees would significantly overcompensate class counsel for their efforts in this matter and should be reduced to a reasonable level.

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The following chart, using information stated in the affidavits of class counsel, shows that class counsel spent less than 767 hours working on the case:

Counsel	Hourly Rate	Total Hours Claimed	Total Fee Based on Rate
Friedman	\$535	225	\$120,054
Swigart	\$595	240	\$150,416
Kazerouni	\$365 to \$560	302	\$157,178
Totals		767	\$427,648

According to the affidavits of class counsel, the above total of hours also include a substantial number of hours for future work related to the settlement. Although counsels provided affidavits no actual time records were included as exhibits to the affidavits (at least this writer did not see them). Thus the foundation for the hours claimed is essentially hearsay, as the affiants are testifying from some record they kept of their hours which has not been provided to the court.

Objector concedes that class counsel provided a valuable service to members of the class in bringing the action and negotiating a settlement. Objector does not doubt that class counsel are highly experienced in their field, but they are also claiming top tier hourly rates (according to their own exhibits) usually reserved for the most senior attorneys in the largest markets at the most expensive firms in the country, yet none of the class counsels have been in practice for

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3 more than 15 years, and several have been in practice for less than ten years.

4 All of the class counsels have stated in their affidavits that they are primarily consumer
5 attorneys that work on contingency actions such as the present matter. Consequently, their
6 claimed hourly rates cannot be based on actual market rates for their services because no one
7 actually hires or pays them based on an hourly rate. For purposes of this objection, O’Keefe will
8 assume that the rates claimed are reasonable. Those premium hourly rates, though, appear to
9 contain at least some level of built-in compensation for the risk taken by class counsel in
10 pursuing this litigation on a contingent fee basis. If we accept the claimed hourly rates and
11 the stated hours, then \$427,648 seems to be reasonable compensation for the services rendered.
12 Counsel would be receiving top billing rates that typically would go to attorneys with perhaps
13 twice the number of years of experience. They would also be receiving payment for every hour
14 claimed, without any real oversight or review of their actual time records. However, class
15 counsel do not stop there instead they are seeking 25% of the settlement worth \$2,118,750
16 which clocks out at the incredible hourly rate of \$2,762.38! Nearly quintuple their highest
17 hourly rate of \$595! This is excessive and not reasonable in relation to the risk or the result
18 obtained.
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23 Class counsel indicate that they have expended approximately \$28,000 in costs but seek
24 reimbursement for only \$25,000. Counsel deserve credit for their frugality as this amount is
25 probably less than what might be incurred in costs for a single plaintiff medical malpractice
26 case. Spread over three different law firms the risk of costs taken by each class counsel is less
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3 than ten thousand each. Put a different way, class counsel are seeking approval for a return 78
4 times greater than the \$28,000 they have invested so far.

5
6 In regards to the result obtained, class counsel have obtained a settlement that would pay
7 each of the potential 4.3 million claimants less than a dollar if each submitted a claim, or less
8 than \$40 if only 3% submit a claim. Yet if each class member has a claim worth at least \$500
9 under the statutes sued upon then the total damages are in the range of \$2,150,000,000. Thus the
10 class is walking away and leaving over \$2 billion in damages on the table.
11

12 The motion to approve the settlement argues that the proposed resolution will have
13 substantial deterrent effect against future violations but it certainly cannot have the same
14 deterrent effect as actually prosecuting these claims to judgment. Class counsel point out that
15 they have prosecuted many similar claims, also to a settlement, which apparently have had no
16 significant deterrent effect as the violations continue to occur as demonstrated by Comenity's
17 mass violation as recently as 2014. Moreover, the fact that class counsel has prosecuted many
18 similar claims with nearly identical legal and factual issues, demonstrates that counsel cannot
19 reasonably argue that the settlement it achieved in this case required extraordinary skill, or a
20 great assumption of risk. Counsel walked a well-trod path – while counsel should be awarded
21 for their efforts, nothing in this case justifies such a high lodestar multiplier or high fee award.
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25 If the Court is inclined to compensate counsel with a lodestar multiplier, O'Keefe
26 suggests that a more reasonable fee would be \$855,296, which is double the hourly fees claimed
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3 by class counsels this would be slightly higher than ten percent of the settlement, and would
 4 also mean that all counsels would receive an effective hourly rate of \$1,115.00. An award of
 5 that size would not only adequately compensate counsel for their efforts, it will still provide
 6 adequate incentive for counsel to continue pursuing other similar cases on a contingent fee
 7 basis.

8
 9 The above resolution would put \$1,263,454 back into the settlement for distribution to
 10 the claimants and increase the payout per claim (assuming 3% claim rate about 129,000 claims)
 11 to about \$43.00 per claim.

12
 13 If this Court agrees and upholds this objection, then counsel for O'Keefe respectfully
 14 requests an award of attorney fees in the amount of \$22,300 for approximately twenty hours of
 15 review and work at the proposed effective hourly rate of \$1,115.00 as set forth above, for
 16 benefiting the class as a whole and increasing the distribution to the class.

17
 18 Due to the cost and distance Objector is unable to appear in person at the fairness
 19 hearing, however, Objector would like to appear telephonically at the fairness hearing if the
 20 Court allows.

21
 22 Respectfully Submitted
 23 HOESCH & VANDER PLOEG, P.L.C.

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 25 Dated: February 9, 2015

26 By: /s/ Scott Mancinelli
 27 Scott Mancinelli (SBN 171858)
 28 Attorney for Class Member Amy O'Keefe

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